



California Fair Political Practices Commission

August 12, 1986

Raymond M. Cadei
Diepenbrock, Wulff, Plant &
Hannegan
300 Capitol Mall, Seventeenth Floor
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-86-246

Dear Mr. Cadei:

This letter is in response to your July 22, 1986 telephone conversation with John McLean and your letter of July 23, 1986, requesting written advice on behalf of your wife, Phyllis Cadei.

QUESTION

As the Assistant Director for Legislative Affairs of the Department of Developmental Services, is your wife required to disqualify herself from decisions which could affect clients of your law firm, in which you have a less than 10 percent partnership share?

CONCLUSION

Under the facts presented, your wife is not required to disqualify herself from participating in such decisions.

ANALYSIS

In your letter, you indicated that your law firm, in which you have less than a 10 percent partnership share, recently merged with another law firm. A partner from that firm does substantial work for the California Association for Retarded Citizens, and for the California Association of Rehabilitation Facilities.

You have also indicated that your wife, as Assistant Director for Legislative Affairs of the Department of Developmental Services, represents the Department before legislative committees regarding bills which could have an effect on your firm's new clients. She is also involved in policy decisions and a variety of other issues through her

Raymond M. Cadei
August 12, 1986
Page 2

close contact with the Director and Chief Deputy Director. You are concerned about a possible conflict of interest between your wife's duties and their possible effects on the clients of your firm, in which you have a share of the partnership.

The Political Reform Act (the "Act")^{1/} provides that a public official may not make, participate in making, or use her official position to influence any governmental decision in which he knows or has reason to know that he has a financial interest. Section 87100. A financial interest is defined by Section 87103 as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

* * *

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Income is defined in Section 82030(a) to mean, among other things, the following:

... Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater....

The Commission staff previously advised on a similar situation (Advice Letter to Russ Lesser, No. A-82-187, copy enclosed). In that letter, a city councilmember holding a

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

Raymond M. Cadei
August 12, 1986
Page 3

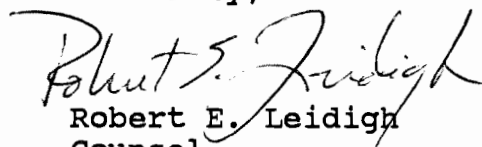
9 percent share of stock in an accountancy corporation was found not to have a conflict of interest when a developer used the councilmember's firm for his accountancy services.

You are in an analogous position. If your ownership interest in your firm was 10 percent or more, the California Association for the Retarded, the various local Associations for the Retarded, and the California Association of Rehabilitation Facilities or their members would be sources of income to you. If your pro rata share of their payments to the firm exceeded \$500 during the 12-month period preceding any decision by your wife which would have a material financial effect upon them, your wife would have a possible conflict of interest. (Her community property interest in the \$500 would be \$250.) However, since you have less than a 10 percent interest in the firm, the payments these groups make are not imputed to you. The firm, not the clients, is your and her source of income.

Since these groups are not a source of income to your wife, even if she participated in a decision foreseeably affecting them, she would have no conflict of interest under the Act. Conversely, since the firm is a source of income to her, a decision having a material financial effect on the firm would create a conflict. Thus if it is reasonably foreseeable that the decision as to the groups would result in a material financial effect upon your firm, there would be a need for disqualification. The size and diversity of your firm makes this seem unlikely.

Should you have any further questions, I may be reached at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:MS:plh
Enclosure

DIEPENBROCK, WULFF, PLANT & HANNEGAN

LAW OFFICES

300 CAPITOL MALL, SEVENTEENTH FLOOR

SACRAMENTO, CALIFORNIA 95814

(916) 444-3910

TELECOPIER
(916) 446-1696

TELEX
70-5328

July 23, 1986

FILE NO. 30E

FORREST A. PLANT
JOHN J. HANNEGAN
ROBERT P. WULFF
JOHN S. GILMORE
DAVID A. RIEGELS
DENNIS M. CAMPOS
STEVEN H. FELDERSTEIN
DENNIS R. MURPHY
JOHN E. FISCHER
CHARITY KENYON
MICHAEL S. McMANUS
RAYMOND M. CADEI
BRIAN T. REGAN
THOMAS G. MOUZES
JEFFERY OWENSBY
WHITNEY RIMEL
LAWRENCE B. GARCIA
FELICITA S. YOUNG
WILLIAM J. COYNE
PATRICIA J. HARTMAN
DAVID R. McANANEY
DAVID L. DITORA
R. JOHN SWANSON

JOHN V. DIEPENBROCK
R. JAMES DIEPENBROCK
CYRUS A. JOHNSON
THOMAS A. CRAVEN
WILLIAM B. SHUBB
JAMES T. FREEMAN
JACK V. LOVELL
DAVID ROSENBERG
WILLIAM W. SUMNER
FRANCIS M. GOLDSBERRY II
KAREN L. DIEPENBROCK
JANE DICKSON McKEAG
FORREST A. PLANT, JR.
KEITH W. McBRIDE
TIMOTHY R. MURPHY
MARGUERITE E. C. MOSNIER
FRANK R. FEDOR
STEVEN W. RAY
JO PITTMAN LOWE
ROBERT L. LITCHFIELD, JR.
DONALD M. WANLAND, JR.
FRANKLIN T. ESPEGREN
CONNIE A. HOLT

SUBJECT:

Mr. John McLean
Fair Political Practices Commission
Legal Division
P.O. Box 807
Sacramento, CA 95804

Dear Mr. McLean:

As we discussed on the telephone on July 22, 1986, I am a partner in the law firm of Diepenbrock, Wulff, Plant & Hannegan. As I also told you, the firm is sufficiently large that no partner has a ten percent share of the partnership. I, being a junior partner, have substantially less than a ten percent share.

The reason I called you and the reason for this letter is that as of June 1, 1986, this firm merged with another law firm. A partner in that firm does a significant amount of legal work for the California Association for Retarded Citizens and the various County Associations for Retarded Citizens. He also represents the California Association of Rehabilitation Facilities. My wife is employed by the Department of Developmental Services as the Assistant Director for Legislative Affairs.

DIEPENBROCK, WULFF, PLANT & HANNEGAN

Mr. John McLean
July 23, 1986
Page 2

This is a civil service exempt position which involves her in representing the Department before Legislative committees regarding bills which can have an effect on the new clients of the firm. In addition, she is involved in policy decisions and works closely with the Director and Chief Deputy Director regarding a variety of issues. As I discussed with you, I have intentionally avoided any contact with these clients or their cases and intend to continue that policy into the indefinite future.

You indicated on the telephone that you did not feel that this situation put my wife in a conflict of interest position despite the fact that some or all of these clients may generate sufficient legal fees to the partnership so that my share of those fees would exceed \$250. As I explained to you, although at the present time no one of these clients has generated fees sufficient to reach that level, it is entirely possible in the next six months or in the next fiscal year thereafter any one or possibly several of these clients may generate fees which would result in income to me in excess of \$250. I am writing to request your written opinion confirming that such income would not result in my wife having to disqualify herself from her employment activities which could materially affect the California Association for the Retarded, the various local Associations for the Retarded or the California Association of Rehabilitation Facilities or their members.

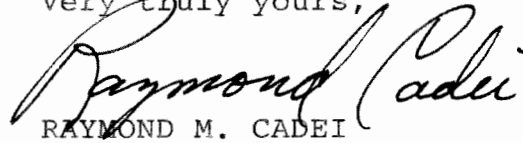
If further facts or information are necessary in order for you to express an opinion in this regard, please feel free

DIEPENBROCK, WULFF, PLANT & HANNEGAN

Mr. John McLean
July 23, 1986
Page 3

to contact me. Of course, an early response to this request will be extremely helpful since it is an existing concern at this time. Thank you for your cooperation regarding this matter.

Very truly yours,

A handwritten signature in cursive script, reading "Raymond Cadell". The signature is written in dark ink and is positioned above the printed name.

RAYMOND M. CADEI

cc: Mr. Tod Beach
2/Work5



California Fair Political Practices Commission

July 30, 1986

Raymond M. Cadei
300 Capitol Mall, Seventeenth Floor
Sacramento, CA 95814

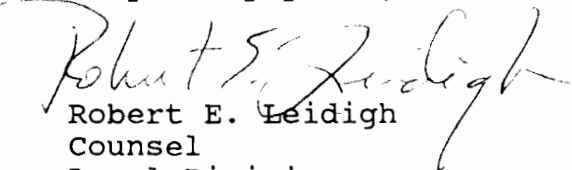
Re: 86-246

Dear Mr. Cadei:

Your letter requesting advice under the Political Reform Act has been received on July 30, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Robert E. Leidigh
Counsel
Legal Division

REL:plh